

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEWAZINGA CORP.,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Civil Action No. 20-cv-01106-LGS

JURY TRIAL DEMANDED

REDACTED PUBLIC VERSION

**DECLARATION OF MICHELE RILEY IN SUPPORT OF KEWAZINGA'S
OPPOSITION TO GOOGLE'S MOTION TO EXCLUDE CERTAIN PORTIONS OF
THE OPINIONS OF MS. MICHELE RILEY**

I, MICHELE RILEY, hereby declare as follows:

1. I was retained by Kewazinga Corp. to analyze damages resulting from alleged patent infringement by Google, LLC. I studied the record and prepared my Opening Expert Report dated May 16, 2022 ("Opening Report"), and my Reply Expert Report dated July 29, 2022 ("Reply Report"), both of which collectively disclose my qualifications, my opinions in this case and explain the basis therefore in detail. I incorporate by reference herein my statements in my Opening Report and Reply Report attached as Exhibits 1 and 2 hereto.

2. As explained in my Reports, Google gives users free access to numerous products and services in order to keep users in the Google Ecosystem where users will view advertising. In 2014 (the start of the damages period), Google's total revenue was approximately \$66 billion.¹ Of that, \$59.6 billion, approximately 90%, was advertising revenue.² Outside analysts consider Google to be an advertising business, not a search engine business. For example:

- "Google has always portrayed itself as a tech company and has invested in many far-reaching areas of technology. [...] But Google's main business is online advertising. In 2020, Alphabet generated almost \$183 billion in revenue. Of that, \$147 billion — over 80% — came from Google's ads business, according to the company's 2020 annual

¹ Exhibit 3, excerpts of Alphabet Inc. 2016 Form 10-K, p. 24 (restating revenue for 2014)

² Opening Report ("Riley Rpt.") at Exhibit 5.1; Exhibit 3, p. 23.

report.”³

- “Regardless of what Google says, we often seem to forget that while Google is many things, it’s absolutely an ad company first.”⁴
- “Ask someone what Google is. Most likely, they will reply that Google is a search engine company. But a more accurate explanation is that it is an advertising company because a vast majority of its revenue comes from advertising.”⁵

3. Google’s 10-K attributes 75% of Google’s overall ad revenue to its Google Properties segment (later renamed Google Search & Other)⁶ and was described as “[p]aid clicks for our Google properties represent engagement by users and include clicks on advertisements by end users related to searches on Google.com, clicks related to advertisements on other owned and operated properties including Gmail, Maps, and Google Play; and viewed YouTube engagement ads like TrueView [...] and certain trial ad formats.”⁷ Each of these properties are part of the Google Ecosystem.

4. The Google Ecosystem is discussed in Google’s testimony. Timothy Riitters, who in 2013 oversaw Google’s Financial Planning and Analysis, testified that Google provides a

[REDACTED]⁸

According to Mr. Riitters, if Google [REDACTED]

[REDACTED]

[REDACTED]⁹ Mr. Riitters described how Google is [REDACTED]

[REDACTED]

[REDACTED]¹⁰ He explained that if Google [REDACTED]

³ Exhibit 4, <https://www.cnbc.com/2021/05/18/how-does-google-make-money-advertising-business-breakdown-.html>

⁴ Exhibit 5, <https://liferhacker.com/remind-google-is-an-ad-company-1793384443>

⁵ Exhibit 6, <https://smei.org/blog/google-search-engine-advertising-company/>

⁶ Riley Rpt. ¶ 97 (citing 2016 Alphabet, Inc. Form 10-K, p. 23 (restating 2014 revenue)). The other 25% of 2014 was attributed to the segment named Google Network Members’ Properties.

⁷ *Id.* ¶ 97 (citing 2016 Alphabet, Inc. Form 10-K, p. 24).

⁸ *Id.* ¶ 132 (citing Deposition of Timothy Riitters, dated August 6, 2013, pp. 26 & 100 (Hylton Deposition, Exhibit 6)).

⁹ *Id.* ¶ 133 (citing Deposition of Timothy Riitters, dated August 6, 2013, p.103 (Hylton Deposition, Exhibit 6)).

¹⁰ *Id.* ¶ 134 (citing Deposition of Timothy Riitters, pp. 100-01 (Hylton Deposition, Exhibit 6)).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²¹

7. Google's goal to drive user engagement with its ecosystem to increase advertising revenue is a known practice for internet-based companies because increased customer engagement leads to increased overall profitability, with engaged users becoming repeat customers and referral sources.²² Offering a product, [REDACTED]

[REDACTED]²³

8. Google does not [REDACTED]. However, a [REDACTED] emphasizes the importance of Google Maps, stating [REDACTED]

[REDACTED]²⁴ The presentation states Google Maps [REDACTED]

[REDACTED]

[REDACTED]²⁵ [REDACTED] corroborates the notion that Google products, including Maps and StreetView, are contributing to the Google Ecosystem over and above what Google [REDACTED] to Maps.

9. Specifically, as a part of this litigation, Google disclosed its purported Geo profit and loss statement (the "Geo P&L"), representing that it includes worldwide revenues and costs

[REDACTED]²⁶ Google testified that the Geo Consumer product group

²⁰ *Id.* ¶ 104 (citing GOOG-KZGA-00210250 - 00210251 (Filip Deposition, Exhibit 2)). Originally, the Street View project was called City Block.

²¹ *Id.* ¶ 104 (citing GOOG-KZGA-00210250 - 00210251 (Filip Deposition, Exhibit 2)).

²² *Id.* ¶ 48 (citing <https://www.searchenginejournal.com/content-marketing-kpis/user-engagement-metrics/>)

²³ *Id.* ¶ 48 (citing <https://www.codefuel.com/blog/what-is-user-engagement/>)

²⁴ GOOG-KZGA-00119663 - 00119692 at 00119673 (Saidon Deposition, Exhibit 14).

²⁵ GOOG-KZGA-00119663 - 00119692 at 00119665 (Saidon Deposition, Exhibit 14).

²⁶ Exhibit 7, excerpts from the Deposition of Shere Saidon dated March 30, 2022, pp. 58-59.

encompasses [REDACTED]²⁷ In the Geo P&L, Google [REDACTED]
[REDACTED] with Google Maps from 2014 through 2019. This equates to approximately [REDACTED] of Google’s overall advertising revenue of \$414 billion for the same period.²⁸

10. Google’s local search, or searching with geographical intent, generates a map impression for the searcher.²⁹ [REDACTED]
[REDACTED].³⁰ Google documents represent that [REDACTED] searches have local intent.³¹ For example, in response to Kewazinga’s interrogatories, Google referenced a document demonstrating that [REDACTED] of all searches on Google.com were local searches.³² Google notes that [REDACTED] return a map impression.³³ As such, when using only the Geo P&L as a starting point for a royalty base, the less than one percent of U.S. ad revenue shown would exclude roughly [REDACTED] of search returns where the user was shown a map impression. Regardless of whether Google uses the Geo P&L for business purposes, it does not provide a breakdown of revenue information that is reasonable to rely on as the sole source of revenue information for the purpose of calculating a reasonable royalty as damages in a patent case. In short, since it ignores Google’s overall advertising revenue, sole reliance on the Geo P&L would result in a substantial undercount.

11. Google’s publicly filed financial statements report Google Properties segment ad revenue through 2018. In 2019, Google renamed the category Google Search & Other and

²⁷ Exhibit 7, p. 76.

²⁸ Riley Rpt., Exhibit 10.

²⁹ *Id.* ¶ 57 (citing Defendant Google LLC’s Supplemental Responses And Objections To Plaintiff Kewazinga Corp.’s Interrogatories (Nos. 1, 2, 4, 7–9, 11, 13–18, 20, 22–24) dated April 8, 2022, p. 16 (ROG 9)).

³⁰ *Id.* ¶ 192 (citing GOOG-KZGA-00273586 – 00273660 at 00273595).

³¹ *Id.* ¶ 193; Reply Report (“Reply Rpt.”) ¶ 57.

³² Reply Rpt. ¶ 57 (citing GOOG-KZGA-00351062 (Marquardt Deposition, Exhibit 8); Riley Rpt. ¶ 50 (citing KZGA-00377045 (Hylton Deposition, Exhibit 5))).

³³ Reply Rpt. ¶ 57 (citing Defendant Google LLC’s Supplemental Responses And Objections To Plaintiff Kewazinga Corp.’s Interrogatories (Nos. 1, 2, 4, 7–9, 11, 13–18, 20, 22–24) dated April 8, 2022, p. 16 (ROG 9)).

changed its reporting to separate YouTube advertising from the segment, and restated numbers back to 2017³⁴ This segment revenue is the most granular level of revenue reported by Google, but does not publicly disclose revenue on a per product basis. Google did not produce any more granular revenue information underlying its 10-K reports that would allow me to separate how much of its advertising revenue is attributed to different sources or products within Google's Ecosystem. Thus, determining revenue attributed to Street View, and in turn, the Patented Technology, for the purposes of calculating damages in this case, required estimation based on other sources of information available and produced by Google.

12. In my determination of the royalty base, I use Google Properties (aka Google Search & Other) ad revenue as a starting point to calculate its ad revenue related to the use of the Patented Technology within Street View that [REDACTED] After apportioning from worldwide to U.S. ad revenue, I then use [REDACTED] as a conservative approximation of the portion of Google searches performed with local intent. I note that [REDACTED] is on the low-end of the [REDACTED] range estimated by Google in documentary evidence. Therefore, my choice of a low-end conservative estimate is an inherent apportionment of any revenue contributions for which no specific data was provided, including for fringe cases that may be exceptions to behaviors of the majority of users. Choosing the [REDACTED] resolves any doubts to Google's benefit because, as I point out in my Reply Report, it accounts for Mr. Meyer's speculation that there is [REDACTED]

[REDACTED]³⁵ By using the low end of the apportionment rate, [REDACTED] I have left up to an additional [REDACTED]³⁶ of local search ad revenue to account for other elements, including elements that Google argues are "non-map" elements that are returned in local search

³⁴ Riley Rpt. ¶ 97 (citing 2019 Alphabet, Inc. Form 10-K, p. 30).

³⁵ Reply Rpt. ¶ 57.

³⁶ [REDACTED]

such as news feeds, Twitter feeds, image carousels, and recipe carousels.³⁷ This is reasonable in light of the fact that Google did not provide any data indicating monetization of these items in order to allow reliable deduction of any associated value.

13. I subtract the ad revenue captured in Google's Geo P&L because it is already included in a separate calculation in my analysis. As a further apportionment, I subtract the costs associated with Google's collection of the panorama images used in the Patented Technology as I understand this imagery itself is outside the scope of the Patented Technology and because the

14. As a further apportionment, I apply metrics related to Google's which, after consideration of the record, I determined to be the appropriate metric for allocation of revenue. Google tracks It reflects a measurement of users within the Google Ecosystem who are interacting with Street View, including the Patented Technology. It is appropriate to look at I am measuring the value of user engagement with the Google Ecosystem.

15. In 2019 (September through December) a combined Applying that to the calculated portion of local search ad revenue approximates revenue from which performed a local search and interacted with Street View in Google Maps. I then apportioned that result based on the provide animated, smooth transitions when users navigate from one panorama to another—the alleged infringing feature of Street View. My analysis found that the average

³⁷ Dkt. 284 at 9-10.

³⁸ Riley Rpt. ¶ 186 (citing GOOG-KZGA-00377040 (Marquardt Deposition, Exhibit 7)).

██³⁹ By applying both the ██████████ apportionment factors, I capture those ██████████

██. I note that the ██████████ are both percentages ██████████, thus it is appropriate to use those metrics in combination.

16. Maps is a product in the Google Ecosystem that is closely tied to local searches. Google identified that ██████████. As such, determining ██████████ of Maps that use Street View and specifically transition between panoramas (as accomplished by the use of the combination of the ██████████ metrics) captures the intersection within the ecosystem between Google users who are using the Patented Technology and Google users performing local searches. This calculation approximates the value to Google of having those users of the Patented Technology in the Google Ecosystem that will use Google’s local search and thus generate advertising revenue for Google. Google did not produce any information specifically detailing the number of ██████████ performing local searches that were also Maps users or that would suggest this approximation to be unreliable.

17. Google posits that, in the alternative to the calculation described above, I should have used “the percentage of Google Search users who click on Street View from a Google search result page ██████████”⁴⁰ That ██████████ “represents the percentage of those local searches in which a user clicks into Street View from the search result page.”⁴¹ This statistic ignores the multiple other ways that a user could access Street View. For example, a user might start with a local search, click on a map, and then enter Street View. The royalty in this case should not be narrowly limited to only the specific amount of use of the Patented Technology by local

³⁹ *Id.* at Exhibit 11; *Id.* ¶ 190.

⁴⁰ Dkt 284 at 7.

⁴¹ Dkt 284 at 8 n.2.

searchers directly after performing a local search. That approach ignores the Google Ecosystem business model entirely, and substantially undervalues the presence and value of the Patented Technology in the Google Ecosystem for the reasons stated above. It eliminates all the value accruing to the Street View usage made before and after that search occurs.

18. Google's assertion that my damages analysis must demonstrate how many users would leave the Google Ecosystem in the absence of Street View (or conversely, enter the Google Ecosystem because of Street View) runs contrary to my task of estimating a reasonable royalty relating to the value of Street View to Google. When Google posed these same questions in deposition, I explained that my calculation was designed to determine who is using the Patented Technology within Street View and what that is worth to Google.⁴² I noted that Google simply wants people in their ecosystem so that they can sell advertising and that Street View is one of Google's products that has a demonstrated track record [REDACTED] [REDACTED] demonstrating value to the Google Ecosystem.⁴³

19. I used Google's SEC filings for the Google Segment including, among other things, Maps (including Street View containing the Patented Technology) to analyze Google's profitability related to the Patented Technology. Google criticizes my use of this metric, but provides no better metric for measuring profit related to the Patented Technology. The only other data point available for profitability is the aforementioned Geo P&L that includes allocations of both revenue and costs from higher level Google financials, and Google representatives were not able to describe how that P&L was calculated. For example, Shere Saidon, who oversees Geo monetization for finance, stated that [REDACTED]

[REDACTED].⁴⁴ Also, that P&L relates to revenues that

⁴² Exhibit 5 to Declaration of Jason Sobel dated March 17, 2023 ("Sobel Dec."), excerpts from the Deposition of Michele M. Riley taken August 15, 2022, p. 188:15-19.

⁴³ Sobel Dec., Exhibit 5, p. 189:10-17, 190:6-18, 191:10-18.

⁴⁴ Exhibit 7, pp. 7, 30-31.

Google chose to [REDACTED] to Maps, and is not representative of profitability of search advertising revenue attributable to the Patented Technology.

20. Google argues that I make an unsupported statement that [REDACTED]
[REDACTED].⁴⁵ Google ignores the evidence cited throughout my Opening Report demonstrating that Street View was also seen [REDACTED].⁴⁶

21. Google further criticizes my removal of YouTube revenue from the Google segment revenue without a corresponding adjustment to the segment profitability.⁴⁷ What Google fails to mention is that while it separately reports YouTube revenue, Google does not separately report YouTube profit. The calculation Google posits is impossible to perform without the more granular unproduced information. However, for the sake of argument, to examine the impact of the analysis Google suggests, I assumed that YouTube is twice as profitable as the Google Segment (i.e., using 56.4% profit margin (twice the 28.2% segment margin)). For the period Google reports YouTube revenue separately, this analysis results in a profit margin reduction of only 3.8%, which is not a drastic difference. Importantly, it is not reliable to assume that YouTube's profit vastly outpaces that of the entire Google Segment; this calculation is only provided for demonstrative purposes. And again, Google has provided no data that would allow me to perform this calculation.

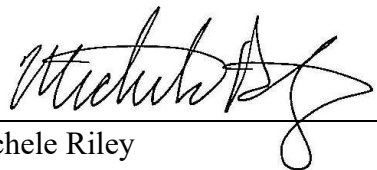
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

⁴⁵ Dkt 284 at 14.

⁴⁶ Riley Rpt. ¶ 311 (citing Deposition of Catherine Heilig dated April 7, 2022, p. 38, 60-61; GOOG-KZGA-00123242 - 00123400 at 00123248 (Marquardt Deposition, Exhibit 19); GOOG-KZGA-00110515 - 00110533 at 00110518); Riley Rpt. ¶ 148 (citing GOOG-KZGA-00184177 - 00184179 at 00184177 (Filip Deposition, Exhibit 11); GOOG-KZGA-00119663 - 00119692 at 00119673 (Saidon Deposition, Exhibit 14); GOOG-KZGA-00076715 - 00076801 at 00076718 & 00076768)

⁴⁷ Dkt 284 at 15.

Dated: March 17, 2023


Michele Riley